

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SANDRA ANNETTE SHERRILL ,
INDIVIDUALLY AND AS
REPRESENTATIVE OF THE ESTATE
OF DALE C. SHERRILL, DECEASED,
AND AS NEXT FRIEND TO D.C.S. JR.,
T.A.S., AND J.A.S., MINORS,

Plaintiffs,

VS.

PERRY JAY MCCLURE,

Defendant.

CIVIL ACTION NO. _____

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SANDRA ANNETTE SHERRILL, both in her individual capacity and as representative of the ESTATE OF DALE C. SHERRILL, deceased, as well as next friend to D.C.S., JR., T.A.S., and J.A.S., minors (hereinafter referred to as “Plaintiffs”), and respectfully file this Original Complaint against PERRY JAY MCCLURE (hereinafter referred to as “Defendant”), and in support thereof would state and show the following:

A. Parties

1. Plaintiff Sandra Annette Sherrill is the surviving wife of Dale Clint Sherrill, deceased. She appears in this action in her individual capacity, as well as the representative of her husband's estate. She also appears in this action as next friend to her and Dale Sherrill's minor children, D.C.S., JR., T.A.S., and J.A.S. She and her children reside in and are citizens of Jefferson, Marion County, Texas.

2. Defendant Perry Jay McClure is an individual who resides in and is a citizen of the state of Indiana. Service of process upon this Defendant may be had by serving him at his last known address, 1504 E. St. RD. #42, Cloverdale, Indiana, 46120.

B. Jurisdiction

3. This Court has jurisdiction over the lawsuit under the provisions of 28 U.S.C. Section 1332. The parties to this lawsuit are citizens of different states, and the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

C. Facts

4. On October 17, 2007, Dale Clint Sherrill was driving his Marion County Sheriff's Deputy squad car, a 2001 Ford Crown Victoria (VIN #2FAFP71W41X166497), traveling west on SH 49 at the intersection of US 59 in Jefferson, Marion County, Texas, another vehicle driven by Perry Jay McClure struck his vehicle.

5. Dale Clint Sherrill was responding to an emergency call with emergency light and sirens activated.

6. As a result of the accident, Dale Clint Sherrill suffered fatal injuries.

D. Cause(s) of Action As To Defendant Perry Jay McClure

7. Plaintiffs' injuries and damages resulted from the collision between the vehicle in which Plaintiff Dale Clint Sherrill was riding and the vehicle driven by Defendant Perry Jay McClure. In addition, the injuries and damages complained of herein were proximately caused by Defendant's negligent acts and/or omissions, including, but not limited to, one of more of the following:

- a. Failing to keep such a lookout as would have been kept by a person exercising ordinary care and prudence under the same or similar circumstances;
- b. Traveling at a faster rate of speed than a person exercising ordinary care and prudence would have traveled under the same or similar circumstances;
- c. Failing to make such a timely and proper application of the brakes as would have been made by a person exercising ordinary care and prudence under the same or similar circumstances; and/or
- d. Failing to make such turning movements of the vehicle in question as would have been made by a person exercising ordinary care and prudence under the same or similar circumstances;

8. The foregoing acts and/or omissions of Defendant were a producing and/or proximate cause of Plaintiffs' injuries and damages.

E. Damages to Plaintiffs

9. As a result of the acts and/or omissions of Defendant, Plaintiff Dale C. Sherrill suffered disfigurement, conscious physical and emotional pain, torment, mental anguish, and/or emotional distress prior to his death, and these injuries survive his death through his estate.

10. As a result of the acts and/or omissions of Defendant, Plaintiff Sandra Annette Sherrill has suffered past and future: loss of care, maintenance, support, services, advice, counsel, reasonable contributions of a pecuniary value, loss of companionship and society, loss of consortium, emotional distress, and mental anguish as a result of the fatal injuries to her husband, Dale C. Sherrill.

11. As a result of the acts and/or omissions of Defendant, Plaintiff Sandra Annette Sherrill has suffered a loss of inheritance of the assets that Dale C. Sherrill, in reasonable probability, would have added to the estate and left at natural death to Plaintiff.

12. As a result of the acts and/or omissions of Defendant, Plaintiffs D.C.S., JR., T.A.S., and J.A.S., minors, have suffered past and future: loss of care, maintenance, support, services, advice, counsel, reasonable contributions of a pecuniary value, loss of companionship

and society, loss of consortium, emotional distress, and mental anguish as a result of the fatal injuries to their father, Dale C. Sherrill.

13. As a result of the acts and/or omissions of Defendant, Plaintiffs D.C.S., JR., T.A.S., and J.A.S., minors, have suffered a loss of inheritance of the assets that Dale C. Sherrill, in reasonable probability, would have added to the estate and left at natural death to Plaintiffs.

14. As a result of the acts and/or omissions of Defendant, Plaintiff Sandra Annette Sherrill has become obligated to pay reasonable and necessary medical, funeral, and burial expenses as a result of the fatal injuries to Dale C. Sherrill.

15. The above and foregoing acts and/or omissions of Defendant, resulting in the injuries and damages complained of herein, have caused actual damages to Plaintiffs in an amount within the minimum jurisdictional limits of this Court.

F. Prayer

16. For the reasons presented herein, Plaintiffs pray that the Defendant be cited to appear and answer, and that upon a final trial of this cause, Plaintiffs recover judgment against Defendant for:

- a. actual damages;
- b. prejudgment and post-judgment interest beginning October 17, 2007;
- c. costs of suit; and
- d. all other relief the Court deems proper.

Respectfully submitted,

The TRACY firm

/s/ E. Todd Tracy

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